

DT06 Rec'd PCT/PTO

10 SEP 2002

PC 37F3

Please type a plus sign (+) inside this box → ☐PTO/SB/21 (6-98)  
Approved for use through 09/30/2000. OMB 0651-0031  
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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<b>TRANSMITTAL FORM</b> <i>(to be used for all correspondence after initial filing)</i>	<b>Application Number</b>	08/809,677	
	<b>Filing Date</b>	2/20/2002	
	<b>First Named Inventor</b>	MYERS, EDWARD F.	
	<b>Group Art Unit</b>	3753	
	<b>Examiner Name</b>	unknown	
<b>Total Number of Pages in This Submission</b>	8	<b>Attorney Docket Number</b>	7728PA01

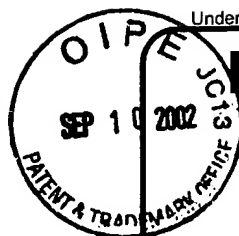
ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached	<input type="checkbox"/> Assignment Papers (for an Application)	<input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Petition Routing Slip (PTO/SB/69) and Accompanying Petition	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input checked="" type="checkbox"/> Additional Enclosure(s) (please identify below):
<input type="checkbox"/> Response to Missing Parts/Incomplete Application	<input type="checkbox"/> Terminal Disclaimer	Communication Asserting Small Entity Status (3 pp.); copy of Acceptance Letter (2 pp.); return postcard
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Small Entity Statement	
	<input type="checkbox"/> Request for Refund	
<b>Remarks</b>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	JAMES W. MC CLAIN Reg. No. 24,536
Signature	
Date	September 6, 2002

CERTIFICATE OF MAILING			
I hereby certify that this correspondence is being deposited with the U. S. Postal Service as first class mail in an envelope addressed to: U.S. Patent and Trademark Office, P.O. Box 2327, Arlington, VA 22202 on this date: 09/06/2002			
Typed or printed name	Karen L. Johnson		
Signature		Date	September 6, 2002

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

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# FEE TRANSMITTAL for FY 2002

Patent fees are subject to annual revision.

**Complete if Known**

Application Number	08/809,677
Filing Date	2/20/2002
First Named Inventor	Edward F. MYERS
Examiner Name	unknown
Group Art Unit	3753
Attorney Docket No.	7728PA01

TOTAL AMOUNT OF PAYMENT (\$) 0

**METHOD OF PAYMENT**

1. ☒ The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit Account Number: 02-4070  
Deposit Account Name: Brown, Martin, Haller & McClain

☒ Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17

☒ Applicant claims small entity status. See 37 CFR 1.27

2. ☐ Payment Enclosed:

☐ Check ☐ Credit card ☐ Money Order ☐ Other

**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
101 740	201 370	Utility filing fee	
106 330	206 165	Design filing fee	
107 510	207 255	Plant filing fee	
108 740	208 370	Reissue filing fee	
114 160	214 80	Provisional filing fee	

SUBTOTAL (1) (\$) 0

**2. EXTRA CLAIM FEES**

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent Claims	20**	X	0
Multiple Dependent	3**	X	0

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
103 18	203 9	Claims in excess of 20
102 84	202 42	Independent claims in excess of 3
104 280	204 140	Multiple dependent claim, if not paid
109 84	209 42	** Reissue independent claims over original patent
110 18	210 9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) 0

\*\*or number previously paid, if greater; For Reissues, see above

**FEE CALCULATION (continued)****3. ADDITIONAL FEES**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
105 130	205 65	Surcharge - late filing fee or oath	
127 50	227 25	Surcharge - late provisional filing fee or cover sheet	
139 130	139 130	Non-English specification	
147 2,520	147 2,520	For filing a request for <i>ex parte</i> reexamination	
112 920*	112 920*	Requesting publication of SIR prior to Examiner action	
113 1,840*	113 1,840*	Requesting publication of SIR after Examiner action	
115 110	215 55	Extension for reply within first month	
116 400	216 200	Extension for reply within second month	
117 920	217 460	Extension for reply within third month	
118 1,440	218 720	Extension for reply within fourth month	
128 1,960	228 980	Extension for reply within fifth month	
119 320	219 160	Notice of Appeal	
120 320	220 160	Filing a brief in support of an appeal	
121 280	221 140	Request for oral hearing	
138 1,510	138 1,510	Petition to institute a public use proceeding	
140 110	240 55	Petition to revive - unavoidable	
141 1,280	241 640	Petition to revive - unintentional	
142 1,280	242 640	Utility issue fee (or reissue)	
143 460	243 230	Design issue fee	
144 620	244 310	Plant issue fee	
122 130	122 130	Petitions to the Commissioner	
123 50	123 50	Processing fee under 37 CFR 1.17(q)	
126 180	126 180	Submission of Information Disclosure Stmt	
581 40	581 40	Recording each patent assignment per property (times number of properties)	
146 740	246 370	Filing a submission after final rejection (37 CFR § 1.129(a))	
149 740	249 370	For each additional invention to be examined (37 CFR § 1.129(b))	
179 740	279 370	Request for Continued Examination (RCE)	
169 900	169 900	Request for expedited examination of a design application	

Other fee (specify) \_\_\_\_\_

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 0

**SUBMITTED BY**

Complete (if applicable)

Name (Print/Type)	JAMES W. MC CLAIN	Registration No. (Attorney/Agent)	24,536	Telephone	619-238-0999
Signature		Date	September 6, 2002		

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of )  
EDWARD F. MYERS ) FOR: ARTIFICIAL LIVER APPARATUS  
AND METHOD  
Serial No.: 08/809,677 ) Group  
Art Unit: 3753  
Filed: February 20, 2002 )

**COMMUNICATION ASSERTING SMALL ENTITY STATUS**

Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

In the Notice of Acceptance of Application Under 35 U.S.C. 371 and 37 C.F.R. 1.494 or 1.495, Confirmation No. 7900, mailed August 22, 2002 (hereinafter referred to as the "Notice"; copy attached), it was noted that this application was originally filed with large entity status and the Notice required payment of a supplemental fee. Applicants submit that this application no longer is subject to large entity status, but now qualifies for small entity status.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 2327, Arlington VA 22202 on September 6, 2002

Karen L. Johnson  
(Name)

*Karen L. Johnson*  
(Signature)

September 6, 2002  
(Date of Signature)

Specifically, when the application was filed, the assignee of record was Cedars-Sinai Medical Center, a large entity. It has previously established during the Rule 47 proceeding in this case that the application had, as of September 4, 1997, through mesne assignments, become the property of the current Assignee, Xenogenics Corporation. (See particularly Exhibits E, F and G in the Supplemental and Restated Petition Under 37 C.F.R. § 1.47 dated September 21, 2001.) The undersigned registered representative for Xenogenics Corporation declares hereby that Xenogenics Corporation has at all times since September 4, 1997, qualified for small entity status and that Xenogenics Corporation has no affiliations or contractual commitments which would preclude such status; 35 U.S.C. § 1.27; M.P.E.P. § 509.03.

It is also submitted that the claim herein for small entity status is timely under 37 C.F.R. § 1.28. The PTO decision granting the Rule 47 Petition was issued on August 22, 2002, less than three months prior to the date of this Communication. Until the Petition was granted, Xenogenics Corporation had no standing to assert its ownership nor its small entity status, as the application on the PTO record remained in the name of Cedars-Sinai Medical Center. Since the present claim for small entity status is timely, the small entity fees paid are appropriate.

It is therefore submitted that the additional large entity fees requested for this application in the Notice are in fact not due and the requirement for payment thereof should be rescinded.

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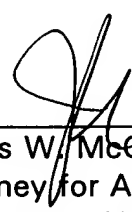
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If there are any questions regarding the small entity status of this application, please contact the undersigned at (619) 238-0999.

Respectfully submitted,

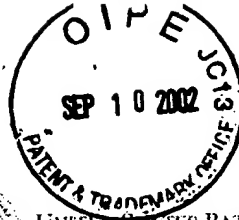
Dated: September 6, 2002

By: \_\_\_\_\_

  
James W. McClain  
Attorney for Applicants  
Registration No. 24,536

BROWN MARTIN HALLER & McCLAIN LLP  
1660 Union Street  
San Diego, California 92101

Telephone: (619) 238-0999  
Facsimile: (619) 238-0062  
Docket No.: 7728-PA01



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents, Box 901  
 United States Patent and Trademark Office  
 Washington, D.C. 20231  
 www.uspto.gov

7728-PA01

U.S. APPLICATION NUMBER NO. 08/809,677	FIRST NAMED APPLICANT Edward F. Myers	ATTY. DOCKET NO. <del>07354/004001</del>
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James W McClain  
 Brown Martin Haller & McClain  
 1660 Union Street  
 San Diego, CA 92101

COPY

INTERNATIONAL APPLICATION NO. PCT/US94/10935	
I.A. FILING DATE 09/27/1994	PRIORITY DATE 09/11/1992

CONFIRMATION NO. 7900  
 371 ACCEPTANCE LETTER



\*OC000000008624866\*

Date Mailed: 08/22/2002

### NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C 371 AND 37 CFR 1.494 OR 1.495

The applicant is hereby advised that the United States Patent and Trademark Office in its capacity as an Elected Office (37 CFR 1.495), has determined that the above identified international application has met the requirements of 35 U.S.C. 371, and is ACCEPTED for national patentability examination in the United States Patent and Trademark Office.

The United States Application Number assigned to the application is shown above and the relevant dates are:

<u>02/20/2002</u>	<u>02/20/2002</u>
DATE OF RECEIPT OF 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) REQUIREMENTS	DATE OF RECEIPT OF ALL 35 U.S.C. REQUIREMENTS

A Filing Receipt (PTO-103X) will be issued for the present application in due course. **THE DATE APPEARING ON THE FILING RECEIPT AS THE " FILING DATE" IS THE DATE ON WHICH THE LAST OF THE 35 U.S.C. 371 REQUIREMENTS HAS BEEN RECEIVED IN THE OFFICE. THIS DATE IS SHOWN ABOVE.** The filing date of the above identified application is the international filing date of the international application (Article 11(3) and 35 U.S.C. 363). Once the Filing Receipt has been received, send all correspondence to the Group Art Unit designated thereon.

The following items have been received:

- U.S. Basic National Fee
- Copy of IPE Report
- Copy of the International Application
- Copy of the International Search Report
- Oath or Declaration
- Request for Immediate Examination

The following defects have been observed:

- Additional claim fees of \$284 as a large entity, including any required multiple dependent claim fee, are required. Applicant must submit the additional claim fees or cancel the additional claims for which fees are due.

SUMMARY OF FEES DUE:

Total additional fee(s) for this application is \$284 for a large entity.

- Total additional claim fee(s) for this application is **\$284**
  - \$4 for 1 independent claims over 3.
  - \$280 for multiple dependant claims surcharge.

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Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

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PAULETTE R KIDWELL

Telephone: (703) 305-3656

PART 1 - ATTORNEY/APPLICANT COPY

FORM PCT/DO/EO/903 (371 Acceptance Notice)